

In the new Restriction Requirement, the Examiner has divided up the process/method claims from Group II, despite the fact that these claims are withdrawn pursuant to Applicants' election, into three separate groups. Thus, in the present Office Action, the Examiner requires that the claims be restricted to one of the following four groups:

I. Claims 1-57, 66 and 68-69, drawn to a coloring composition for a keratin material, a cosmetic skin product, a hair color product and a cosmetic product for nails, eyelashes and/or eyebrow, classified in class 434<sup>1</sup>, subclasses 401, 61, 70.6 and 70.7.

II. Claims 58-59 and 62-63, drawn to a process for coloring a keratin material according to claim 58, classified in class 424, subclass 70.6,

III. Claims 60-61 and 64-65, drawn to a process for coloring a keratin material according to claim 60, classified in class 424, subclass 70.6, and

IV. Claim 67, drawn to a method for artificially tanning and/or browning the skin, and/or for giving a healthy complexion, classified in class 424, subclass 59.

See Office Action at pages 2-5.

The Examiner admits that inventions I and (II-III) and IV are related as product and process of use. See *id.* at page 6. The Examiner further admits that inventions II or III and IV are directed to *related* distinct processes. See *id.* (emphasis added). However, the Examiner asserts that it would be a serious burden to examine Groups I, II, III, and IV together because the inventions have acquired a separate status in the art,

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<sup>1</sup> The Examiner classifies the composition claims in class 434, but this appears to be an error. Class 434 is directed to "Education and Demonstration." Applicants believe the correct classification is class 424, "Drug, bio-affecting and body treating compositions," which is confirmed by the classification in the Office Action dated April 13, 2007.

the inventions require a different field of search, and each invention is likely to raise different prior art and non-prior art issues. *See id.* at page 7.

Applicants disagree and traverse for at least the following reasons. First, Applicants note that in the previous response the composition claims of Group I were elected. These claims are identical to the claims in Group I in the present restriction requirement. Given that the Examiner's regrouping of the process/method claims in the present Office Action has no effect on Applicants' previous election, the Examiner should have examined the elected claims instead of issuing this new restriction requirement. By issuing the new restriction and requiring Applicants to essentially resubmit the previous response, the Examiner is delaying prosecution of this application.

Second, as submitted in the previous response, Applicants respectfully refer the Examiner to M.P.E.P. § 803, which sets forth the criteria and guidelines for Examiners to follow in making proper requirements for restriction. The M.P.E.P. instructs the Examiner as follows:

If the search and examination of an entire application can be made **without serious burden**, the Office **must** examine it on the merits, even though it includes claims to independent and distinct inventions.

M.P.E.P. § 803 (emphasis added).

As before, the Examiner has not shown that examining Groups I, II, III, and IV together would constitute a serious burden. The Examiner has not provided any reason why the process/method claims have been divided up into three separate groups especially since the Examiner admits that the processes/methods of Groups II, III, and

IV are related. Additionally, Applicants submit that examining a composition and a process/method of using the composition (i.e., Groups I and Groups II-IV) would not impose a serious burden on the Examiner, since a search of the composition would overlap the search for the process/method given the classification (class 424). Further, Applicants submit no serious burden would exist in light of the requirement of rejoinder. See M.P.E.P. § 821.04. Accordingly, it is unclear what burden is on the Examiner to examine Groups I, II, III and IV together, and Applicants respectfully request withdrawal of the restriction requirement.

However, to be fully responsive, Applicants continue to elect, with traverse, the subject matter of Group I, comprising claims 1-57, 66 and 68-69.

In addition, the Examiner maintains the election of species requirement as set forth in the Office Action dated April 13, 2007.

Again, Applicants respectfully traverse this election requirement as set forth on pages 2-5 of the Office Action dated April 13, 2007. The Examiner's election requirement is overly restrictive and essentially requires Applicants to elect one specific coloring composition within the scope of the claimed invention. However, to be fully responsive, Applicants elect, with traverse, as a single disclosed species, a coloring agent component such that the dye precursor is chosen from flavanols, catalyst (1) is Mn(II) chloride, catalyst (2) is sodium hydrogenocarbonate, component (B) is lactic acid packaged as a spray, and component (C) is a natural alkaline mineral water packaged as a spray (election of components (B) and (C)). Applicants further elect embodiments of the invention in which the physiologically acceptable medium is water and the coloring component comprising the two components ( $A_1$ ) and ( $A_2$ ) is packaged in the

form of a kit comprising two separate containers, wherein each container is packaged in a pump device without air intake. The claims encompassed by the elected species include claims 1-57, 66 and 68-69.

Applicants respectfully request that the full scope of the claimed invention continue to be examined in this application without restriction or election requirement. If the Examiner chooses to maintain the election of species requirement, Applicants request the Examiner, if the elected species is found allowable, to continue to examine the full scope of the elected subject matter to the extent necessary to determine the patentability thereof, i.e., extending the search to a "reasonable" number of the non-elected species, as is the duty according to M.P.E.P. § 803.02 and 35 U.S.C. § 121.

In view of the foregoing remarks, Applicants respectfully submit that both the restriction and the election of species requirement are in error and request that the requirements be withdrawn.

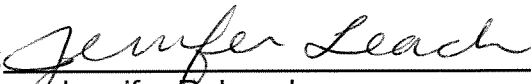
If the Examiner believes a telephone conference could be useful in resolving any of the outstanding issues, she is respectfully invited to contact Applicants' undersigned counsel at 202-408-4325.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

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